

APPEAL NO. 032008
FILED SEPTEMBER 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 26, 2003. The hearing officer determined that the appellant (claimant beneficiary) is the legal beneficiary of the decedent and that the decedent was not in the course and scope of his employment at the time of the motor vehicle accident (MVA) that resulted in his death. The claimant beneficiary appeals the course and scope determination. The respondent (carrier) urges affirmance of the hearing officer's decision. The determination that the claimant beneficiary is the decedent's legal beneficiary has not been appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the decedent was not acting within the course and scope of his employment at the time that he was involved in the MVA. Course and scope of employment is defined as an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes an activity conducted on the premises of the employer or at other locations. Generally, an injury occurring in the use of the public streets or highways in going to and returning from the place of employment is not compensable. American General Insurance Co. v. Coleman, 303 S.W.2d 370 (Tex. 1957).

Whether the decedent was engaged in an activity in furtherance of his employment at the time of the accident was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence established. The hearing officer was not persuaded by the evidence that the decedent was furthering the affairs of the employer at the time he was involved in the MVA and concluded that the decedent was not in the course and scope of his employment at the time of his death. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ASSOCIATION CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**HAROLD FISHER, PRESIDENT
3420 EXECUTIVE CENTER DRIVE, SUITE 200
AUSTIN, TEXAS 78731.**

Chris Cowan
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge